PART IV

Section 1-C

RULES, ORDERS AND NOTIFICATIONS UNDER CENTRAL ACTS AND ORDINANCES.

NOTIFICATION.

No L.D. 1997—Legis. 5-51-97, dated Bangalore, 30th January 1952.

Ordered that Notification No. S.R.O: 44, dated the 7th December 1951 of the Ministry of Finance (Department of Economic Affairs)—the Restricted Auditors Certificates (Part B States) Rules, 1951, published in the *Gazette of India*, Part II, Section 3, dated the 12th January 1952, be republished in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

GOVERNMENT OF INDIA.

MINISTRY OF FINANCE.

(Department of Economic Affairs).

CHARTERED ACCOUNTANTS.

New Delhi, the 7th December 1951.

S.R.O. 44.—In exercise of the powers conferred by sub-section 2 (a) of section 144 of the Indian Companies Act, 1913, (VII of 1913), the Central Government hereby makes the following rules, namely :—

1. (1) These Rules may be called the Restricted Auditors' Certificates (Part B States) Rules, 1951.

(2) They extend to all Part B States other than the State of Jammu and Kashmir.

(3) They shall come into force at once.

2. In these rules, unless the context otherwise requires—

(a) "Council" means the Council of the Institute of Chartered Accountants of India,

(b) "Form" means a form appended to these rules,

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(c) "Institute" means the Institute of Chartered Accountants of India,
(d) "Secretary" means the Secretary to the Council,
(e) "Year" means the period commencing on the 1st day of April of any year and ending on the 31st day of March of the succeeding year.

3. (1) Every person holding a certificate granted under a law in force in the whole or in any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951, (III of 1951), entitling him to act as an auditor of companies in that State or any portion thereof shall, if he desires to continue to act as such auditor, make an application within three months from the commencement of these rules, to the Secretary in Form A.

(2) Every such application shall be accompanied by the original certificate or a duly certified copy thereof, together with a spare copy of the certificate.

4. (1) On receiving an application under rule 3, the Council shall, unless the applicant is subject to any of the disabilities specified in rule 10, enter his name in a register to be called the Restricted Auditors' Certificates (Part B States) Register.

(2) The Council shall maintain the register referred to in sub-rule (1) in Form B.

5. (1) Every person whose name has been entered in the Register referred to in rule 4 shall be entitled to receive a certificate from the Council in Form C.

(2) Every such certificate shall be valid until the 30th June in the year next following.

6. Any person referred to in rule 3 who fails to make an application to the Council within the period specified in that rule or having made such an application has been refused a certificate under rule 5 shall cease to be entitled to be appointed to act as an auditor under sub-section (2) of section 144 of the Indian Companies Act, 1913.

7. In the month of April each year, every holder of a certificate referred to in rule 5, intending to continue to practise as an auditor shall send a report to that effect to the Secretary in Form D in respect of the renewal of the certificate. A person who fails to send such a report shall cease to be entitle to be appointed to act as an auditor and his name shall be removed from the Register referred to in rule 4 unless, on an application made in this behalf, the Council condones the omission. The name so removed shall be notified in the *Gazette of India*.

8. The Council shall, on condonation of the omission referred to in rule 7, restore the name of the person to the Register. The restoration shall be notified in the *Gazette of India*.

9. (1) Every person entitled to act as an auditor of companies under rule 3 shall, so long as he is so entitled, style himself as "Restricted State Auditor" or where he practises under a trade name as "Restricted State Auditors" and shall use the letters "R.S.A." after his name.

(2) A firm shall not be entitled to style itself "Restricted State Auditor" unless all of its partners are entitled to act as auditors of companies under rule 3 above.

10. The Council may at any time suspend or cancel a certificate referred to in rule 5.

(1) if the holder,

(a) has been adjudged by a competent court to be of unsound mind,
(b) is an undischarged insolvent,
(c) being a discharged insolvent has not obtained a certificate from the court that his insolvency was caused by misfortune without any misconduct on his part,

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(d) has been convicted by a competent court, whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence not of a technical nature, committed by him in his professional capacity unless he has been granted a pardon in respect of the offence committed, or on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disatility,

(e) has been declared by the Central Government not be a fit and proper person to be hol er of a certificate under rule 5 by reason of any act of negligence, misconduct or dishonesty committed in his professional capacity, or of any breach of professional propriety, provided that before making such a declaration the Central Governmen' shall call upon the auditor to show cause why his certificate should not be cancelled and cause such enquiry to be made, as it may consider proper and necessary.

(*Explanation* .—Without prejudice to the generality of the reference to any breach of professional propriety, anv act or omission specified in the Appendix to these Rules shall be deemed to be such breach.)

(2) on a request received from the auditor in this behalf :

Provided that the Council shall restore his name to the Register if the auditor makes a request to the Council to that effect within one year of the date of such suspension or cancellation.

The restoration shall be notified in the *Gazette of India.*

11. The suspension or cancellation of a certificate shall be notified in the *Gazette of India* and communicated to the holder of the certificate at his usual address.

12. For the purpose of a sub-clause (e) of clause (1) of rule 10, the following procedure shall be followed :—

(1) Subject to the provisions of this rule, all complaints regarding any act of negligence, misconduct, or dishonesty or any breach of professional propriety referred to in sub-clause (e) of clause (1) of rule 10 against a holder of the certificate referred to in rule 5 shall be investigated and all other enquiries relating to misconduct of such a holder shall be held by the Disciplinary Committee of the Council.

(2) A complaint referred to in clause (1) other than a complaint made by or on behalf of the Central or State Government, shall be in Form E.

(3) Every such complaint shall contain the following particulars, namely,

(a) the acts and omissions which if proved would render the person complained against unfit and not a proper person to be a holder of the certificate;

(b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.

(4) The Secretary shall return the complaint which is not in the proper form or which does not contain the aforesaid particulars to the complainant for representation after compliance with such objections and within such time as the Secretary may specify.

(5) Within sixty days ordinarily of the receipt of a complaint referred to in clause (1) including a complaint by or on behalf of the Central Government or a State Government, the Secretary shall,

(a) if the complaint is against an individual auditor, send a copy thereof to such an auditor at his address entered in the Register ;

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(b) if the complaint is against a firm, send a copy of the complaint to the firm at the address of the head office of the firm as communicated by the complainant, calling upon the firm to disclose the name of the auditor concerned and to send a copy of the complaint to such auditor.

(*Explanation* :—A notice to the firm shall be a notice to all the auditors who are partners or employees of that firm.)

(6) An auditor against whom the complaint is made may within fourteen days of the service of a copy of the complaint under clause (5) of rule 12 or within such time as may be extended by the Secretary, forward to the Secretary a written statement in his defence verified in the same manner as a pleading in a Civil Court.

(7) If on a perusal of the complaint other than a complaint by or on behalf of the Central or a State Government and the written statement, if any, of the auditor concerned and other relevant documents and papers, the Council is of the opinion that there is a *prima facie* case against such an auditor the Council shall cause an enquiry to be made in the matter by the Disciplinary Committee of the Council. If the Council is of the opinion that there is no *prima facie* case against the auditor concerned the complaint shall be filed and the complainant the Auditor concerned and the Central Government shall be informed accordingly.

(8) Notwithstanding anything hereinbefore contained in this rule, the Secretary shall forward a complaint received from or on behalf of the Central or State Government together with the written statement, if any, of the auditor concerned direct to the Disciplinary Committee of the Council for enquiry.

(9) Every notice issued by the Secretary or by the Disciplinary Committee under this rule shall be sent to the auditor or the firm concerned by registered post with acknowledgment due. If such notice is returned unserved with an endorsement indicating that the addressee has refused to accept the notice, the notice shall be deemed to have been served. If the notice is returned unserved with an endorsement that the addressee cannot be found at the address given, the Secretary shall ask the complainant to supply to him the correct address of the auditor or the firm concerned. A fresh notice shall be served upon the auditor of the firm at the address so supplied.

(10) It shall be the duty of the Secretary to place before the Disciplinary Committee, all facts brought to his knowledge which are relevant for the purpose of an enquiry by the Disciplinary Committee.

(11) An auditor against whom the complaint is made shall have the right to defend himself before the Disciplinary Committee of the Council either in person or through a legal representative or any other Restricted State Auditor or a Member of the Institute.

(12) Except as otherwise provided in these rules, the Disciplinary Committee of the Council shall have the power to regulate its procedure in such manner as it considers necessary and during the course of enquiry may examine witnesses on oath, receive affidavits and any other oral or documentary evidence.

(13) The Disciplinary Committee of the Council shall submit its report to the Council and the Council shall consider the report of the Disciplinary Committee and after making such further enquiry if any, as it may deem necessary, forward the same together with its findings to the Central Government.

(14) On receipt of the findings of the Council, the Central Government shall pass such orders as it may consider fit or may refer the case back for further enquiry by the Council and upon receipt of the finding after such enquiry pass final orders thereon.

APPENDIX

[*See* Rule 10 (1) (e)]

A restricted State Auditor shall be deemed to be guilty of breach of professional propriety rendering him to be unfit to act as such if he:

(a) represents that he is a member of the Institute of Chartered Accountants of India or uses the designation "Chartered Accountant" and/or words likely to create an impression that he is a member of the Institute:

(b) allows any person to practise in his name as restricted State Auditor unless such a person is also a Restricted State Auditor and is in partnership with or employed by his firm or himself;

(c) pays or allows or agrees to pay or allow, directly or indirectly, to any person other than a Restricted State Auditor or a retired partner or a nominee or the legal representative of such partner, any share, commission, or brokerage in the fees or profits of his professional services;

(d) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a Restricted State Auditor;

(e) enters into partnership with any other person other than a Restricted State Auditor or secures either through the services of a person not qualified to be a Restricted State Auditor or by means which are not open to a Restricted State Auditor, any professional business;

(f) solicits clients or professional work either directly or indirectly, by circular, advertisement personal communication or interview or by any other means;

(g) advertises his professional attainments of service, or uses any designation or expression other than "Restricted State Auditor" on professional documents, letter-heads, visiting-cards or sign-boards, unless it be a degree of a University established by law in India or recognised by the Council;

(h) discloses information acquired in the course or his professional engagement to any person other than his client, or otherwise than as required by any law in force for the time being;

(i) accepts a position as auditor previously held by a Restricted State Auditor or a Chartered Accountant without first communicating with him in writing;

(j) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 144 of the Indian Companies Act, 1913 (VII of 1913), in respect of the appointments of auditors, have been duly complied with;

(k) certifies, or submits in his name or in the name of his firm a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or any employee in his firm or by another Restricted State Auditor;

(l) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transaction in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(m) expresses his opinion of financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(n) charges in respect of his professional employment fees which are based on the percentage of profits or which are contingent on results;

(o) engages in any business or occupation other than the professional or a restricted State Auditor unless permitted by the Council to be so engaged: PROVIDED that nothing contained herein shall disentitle a Restricted State Auditor from being a director in a company unless he or any of his partners is interested in such a company as auditor;

(p) fails to disclose a material fact known to him which is not disclosed in a financial statement; but disclosure of which is necessary to make the financial statement not misleading;

(q) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(r) is grossly negligent in the conduct of his professional duties;

(s) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion;

(t) fails to invite attention to any material departure from the generally accepted procedure of auditor applicable to the circumstances;

(u) fails to keep monies of his client in a separate banking account or to use such monies for which they are intended;

(v) includes in any statement, return or form to be submitted to the Central or State Government or the Institute any particulars knowing them to be false;

(w) is guilty of such other act or omission in his professional capacity as may be specified by the Council or the Central Government by a notification in the *Gazette of India*.

FORM A.

[*See* rule 3 (1)] 231

Form of Application for a Restricted State Auditors' Certificate.

To

The Secretary to the Council of the
Institute of Chartered Accountants of India.

Sir,

I beg to apply for a Restricted State Auditors' Certificate for practising in the State of..... I also hereby declare that I am not subject to any of the disabilities stated in rule 10 of the Restricted State Auditors' Certificates (Part B States) Rules, 1951.

1. Name in full (block letters).
2. Professional address.
3. Residential address.
4. Father's name.
5. Nationality
6. Date of birth*
7. Particulars of qualifications*
8. Place of business.
9. Date of commencement of business.
10. Occupation in full.
11. Whether holding a salaried employment in addition to practice as auditor.
12. Whether engaged in any other occupation besides 10 and 11 above.
13. Whether intend to continue engagement at 11 and 12 in addition to practice.
14. Whether at any time debarred from practising as an accountant or auditor and if so the reason and duration thereof.

2. I hereby declare that if granted a Registered State Auditor's Certificate, I will be bound by the rules that are in force or may be made from time to time by the Central Government hereafter.

3. I also send herewith the original/certified true copies of the State Auditors' Certificate held by me in the State of ..... with an additional spare copy thereof.

Yours faithfully,

Place.....

Date.....

N.B.—*Documentary evidence in respect of the date of birth and qualification will have to be produced with this application.

FORM B.

[*See* rule 4 (2)] 832

Restricted Auditors' Certificates (Part B States) Register.

(1) No.
(2) Name.
(3) Father's name.
(4) Date of birth.
(5) Professional address
(6) Residential address.
(7) Qualifications.
(8) Certificate for the State of
(9) Date of Issue.
(10) Whether practising independently or in partnership and name of firm.
(11) Whether holding a salaried employment in addition to his practice as an auditor.
(12) Remarks.

FORM C.

[*See* rule 5 (I)]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA.

Restricted State Auditors' Certificate.

This is to certify that.....has been granted a Restricted State Auditor's Certificate for practice within the State of.....He is, therefore entitled to be appointed and to act as auditor of companies within the State of.....

This certificate is valid from the.....day of.....19 to the 30th day of June 19 , inclusive,

Given under the Common Seal of the Institute of Chartered Accountants of India, this..... .....day of.....19 .

Seal

President.

Secretary.

FORM D

[*See* rule 7]

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Report of the intention to continue practice in the State of.....

To

The Secretary to the Council of the Institue of Chartered Accountants of India.

Dear Sir,

I hereby apply for the renewal of my Restricted State Auditors' Certificate within the State of.....

2. I declare that I am not engaged in any other occupation or business besides the profession of accountancy. If and when I intend to be so engaged. I shall obtain the prior permission of the Council.

*3. I am engaged in other occupation (s) besides the practice of the profession of accountancy as.....for which permission of the Council has already been obtained (*vide* their letter No.....dated.....).

4. As and when I cease to be in practice, I shall duly inform the Council.

5. I hold the Restricted State Auditors' Certificate No..... for practice within the State of..... ...for the period ending.....

Yours faithfully,

Signature,
R.S A.C. No.

Place.....

Date.....

*Delete the para not applicable.

FORM E.

[*See* rule 12(2)]

Form of Complaint.

BEFORE THE COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA.

BETWEEN

Petitioner.

AND

Respondent.

Petitioner's address.

Particulars of complaint in paragraphs consecutively numbered.

Particulars of evidence, oral and documentary, if any to substantiate the complaint.

VERIFICATION.

I,.....the petitioner do hereby declare that what is stated above is true to the best of information, knowledge and belief,

Verified to-day the.....day of.....19 at.....

S gnature.

[No. 61(9)ICA/51.]
B. K. KAUL, Dy. Secy.